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Time to Ban Video Gambling Devices on  
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# Gambling with Terrorism and U.S. Military Readiness: Time to Ban Video Gambling Devices on U.S. Military Bases and Facilities?

JOHN WARREN KINDT\*

## I. INTRODUCTION

### A. GAMBLING WITH U.S. "MILITARY READINESS"

This analysis focuses first on a salient military issue: "Is U.S. military readiness being gambled away in the Twenty-First Century's Age of Terrorism?" In analyzing this question a second issue arises regarding the potential bias of informational sources that are closely associated with the gambling industry and its financial leverage. Accordingly, there will be a review of concerns involving some informational sources on gambling issues which have been criticized in the national press as perhaps being too closely associated with the gambling industry and its financial leverage. One conclusion of this analysis is that because the costs outweigh the minimal benefits, the entire U.S. Armed Forces should reinstate the ban on video gambling devices (VGDs) on U.S. bases and other facilities—which was the intermittent policy of the U.S. Armed Forces throughout most of the Twentieth Century. A second recommendation is from the *Columbia Journalism Review*<sup>1</sup> which suggests that military analysts and researchers

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\* Professor, University of Illinois; A.B., William and Mary, 1972; J.D. 1976, M.B.A. 1977, University of Georgia.; LL.M. 1978, S.J.D. 1981, University of Virginia. Sorah Kim, Peter Swider, and Shayne D. Fehr provided valuable assistance in updating, editing, and cite-checking this article. The author/editors attempted to delete references and source materials too heavily influenced by pro-gambling interests or other special interests unless identified as such. For an analysis of public concerns in these issue areas, see John W. Kindt, *The Costs of Addicted Gamblers: Should the States Initiate Mega-Lawsuits Similar to the Tobacco Cases?*, 22 *MANAGERIAL & DECISION ECON.* 17, 19-21, 27-28, 31-32 (2001).

1. Stephen J. Simurda, *When Gambling Comes To Town: How to Cover a High-Stakes Story*, *COLUM. JOURNALISM REV.*, Jan./Feb. 1994, at 36-38 [hereinafter *COLUM. JOURNALISM REV.*].

should "follow the money"<sup>2</sup> and "flat out ask"<sup>3</sup> all sources of gambling information if those sources have ever received direct or indirect financial assistance from pro-gambling interests.<sup>4</sup>

## B. GAMBLING WITH TERRORISM

The comments of academics<sup>5</sup> defending the rapid expansion of the U.S. gambling industry during the first years of the Twenty-First Century, as well as the 1990s, must be viewed in the context of the combined impact U.S. gambling has had on strategic U.S. political, economic, and defense policies.<sup>6</sup> To stimulate the U.S. economy after the 9/11 terrorist attacks on the World Trade Center, the 2002 Economic Stimulus Bill<sup>7</sup> was designed to include major tax and economic incentives worth approximately \$70 billion to \$100 billion to the U.S. consumer economy.<sup>8</sup>

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2. *Id.*

3. *Id.* at 37-38.

4. *Id.* See also John W. Kindt, *U.S. National Security and the Strategic Economic Base: The Business/Economic Impacts of the Legalization of Gambling Activities*, 39 ST. LOUIS U.L.J. 567 (1995) [hereinafter *Strategic Economic Base*], reprinted in *National Gambling Impact & Policy Comm'n Act: Hearing on H.R. 497 Before the House Comm. on the Judiciary*, 104th Cong. 528-45 (1995) [hereinafter *Congressional Gambling Hearing 1995*].

5. See, e.g., John Gonzalez, *Casino Backers are Studying Their Cards*, FT. WORTH STAR TELEGRAM, Feb. 15, 1995, at 28; George Kuempel, *Senator Says He Has Votes to Block Casino*, DALLAS MORNING NEWS, Feb. 15, 1995, at A16. See also Letter from William Bryan, Associate Dean of Research, Editor, Illinois Business Review, to William Eadington, Professor, University of Nevada at Reno (Feb. 15, 1995) (on file with the author). Subsequent to his editorship, William Bryan became Dean of the Loyola University School of Business, and in 2000 he became Dean of the University of Illinois College of Commerce and Business Administration. For examples of unbalanced criticisms by William Eadington, see William Eadington, *Comment*, 23 MANAGERIAL & DECISION ECON. (2003) (forthcoming) [hereinafter *Eadington Comment*].

6. See generally, John W. Kindt & Anne E. C. Brynn, *Destructive Economic Policies in the Age of Terrorism: Government-Sanctioned Gambling As Encouraging Transboundary Economic Raiding and Destabilizing National and International Economies*, 16 TEMPLE INT'L & COMP. L.J. 243 (2002) [hereinafter *Gambling's Destabilizing Economies*].

7. Job Creation and Worker Assistance Act of 2002, Pub. L. No. 107-147, 116 Stat. 21 (2002).

8. Richard S. Dunham, *Just When The Right Thought Big Government Was History*, BUS. WK., Nov. 5, 2001, at 53; see Jim Drinkard, *House Oks \$100B For Economy: Stimulus Bill's Tax Breaks Face Fight in the Senate*, USA TODAY, Oct. 25, 2001, at A5; John W. Kindt, *Internationally, The 21st Century Is No Time for the United States to Be Gambling With the Economy: Taxpayers Subsidizing the Gambling Industry and the De Facto Elimination of All Casino Tax Revenues Via the 2002 Economic Stimulus Act*, 29

Corporate tax-cut requests in the Economic Stimulus Bill, which were proposed for "product-oriented" companies, were chastised by the *Wall Street Journal* and were largely rejected; such as \$2.3 billion for Ford ranging down to \$9 million for Kroger.<sup>9</sup> However, by comparison, the "nonproduct-oriented" gambling companies received a \$40 billion tax gift from the U.S. taxpayers.<sup>10</sup> In 2001, the U.S. House of Representatives Gaming Caucus maneuvered a provision into the Economic Stimulus package for gambling interests to write-off \$40 billion for slot machines and associated electronic devices<sup>11</sup>—a sector of the U.S. economy not only creating no products, but also draining "consumer dollars" away from the consumer economy. The leader of the Congressional Gambling Caucus had originally requested tax write-offs (for slot machines) which the Las Vegas press reported were worth approximately \$133 billion.<sup>12</sup> This latter amount was roughly comparable to one-half of the total regular annual budget for the U.S. Department of Defense<sup>13</sup> or to approximately twice the \$80 billion cost for the U.S. portion of the 2003 war with Iraq.<sup>14</sup> As the Las Vegas press praised this \$40 billion government payback to the gambling industry, which equated to all of the taxes paid by the casino industry for more than a decade,<sup>15</sup> serious concerns were raised about the

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OHIO N.U. L. REV. 363 (2003) [hereinafter *Gambling With the Economy and the Elimination of All Casino Tax Revenues*].

9. Bruce Bartlett, *Tax Rebates Won't Stimulate the Economy*, WALL ST. J., Nov. 1, 2001, at A20; John D. McKinnon & Shailagh Murray, *Companies Could Reap Big Tax Refunds from House Bill*, WALL ST. J., Oct. 23, 2001, at A28. See also Leslie Wayne, *So, Friend, It's Time for That Tax Cut*, N.Y. TIMES, Nov. 18, 2001, § 3, at 1.

10. Tony Batt, *Tax Break for Slots OK'd: Measure Will Let Companies Deduct Technological Expenses*, LAS VEGAS REV. J., Oct. 16, 2001 [hereinafter *Tax Break \$40 Billion for Slots*].

11. *Id.*

12. *Id.*

13. See U.S. Dep't Defense, Annual Budget (2001); H.R. Rep. No. 106-945, at 3 *et seq.* (2000). See also OFFICE OF THE UNDER SECRETARY OF DEFENSE, DEP'T DEFENSE, NATIONAL DEFENSE BUDGET ESTIMATES FOR FY 2002, at Tbl. 1-1 (Aug. 2001), available at <http://www.dtic.mil/comptroller/fy2002budget/fy02grbk.pdf>; U.S. Dep't Defense, *News Release: Department of Defense Amended Budget for FY 2001* (June 27, 2001), available at [http://www.defenselink.mil/news/Jun2001/b06272001\\_bt287-01.html](http://www.defenselink.mil/news/Jun2001/b06272001_bt287-01.html).

14. See, e.g., *Senate OKs \$80 Billion War Package*, NEWS-GAZETTE (Champaign, IL), Apr. 12, 2003, at A3.

15. Compare, *Tax Break \$40 Billion for Slots*, *supra* note 10, with Eugene M. Christiansen, *Gaming Tax Rates Reach to the Sky as States Struggle*, INT'L GAMING & WAGERING BUS., Aug. 2003, at 32. (U.S. gambling industry trade magazine). See also *Gambling With the Economy and the Elimination of All Casino Tax Revenues*, *supra* note 8; John W. Kindt, *Would Re-Criminalizing U.S. Gambling Pump-Prime the Economy and Could U.S. Gambling Facilities Be Transformed into Educational and High-Tech Facilities? Will the Legal Discovery of Gambling Companies' Secrets Confirm Research*

governmental decision-making process and the informational sources being utilized by the gambling industry to promote its interests—such as two well-used Arthur Andersen reports<sup>16</sup> financed by the American Gaming Association (AGA) lobbying group.<sup>17</sup>

An informed review of the research on gambling reveals that the gambling industry has lost the factual debate on “costs” versus “benefits.” Although the pro-gambling interests had substantial influence on the 1999 National Gambling Impact Study Commission (NGISC or 1999 U.S. Gambling Commission) and were excoriated in the national press for trying to stack the Commission,<sup>18</sup> the Commission’s *Final Report*<sup>19</sup> demonstrated that the pro-gambling interests lost the cost/benefit debate. Accordingly, the Commission unanimously called for a moratorium on the expansion of U.S. legalized gambling activities.<sup>20</sup>

However, pro-gambling financed academics/experts had not abandoned lauding the gambling industry. Furthermore, they began to challenge estimates of the social costs created by gambling that they initially had not questioned,<sup>21</sup> and the industry’s strategy appeared to shift

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*Issues?*, 8 STAN. J.L., BUS. & FIN. 169 (2003).

16. Arthur Andersen, *Economic Impacts of Casino Gaming In the United States: Micro Study* (May 1997) (prepared for the Am. Gaming Ass’n, lobbying group) [hereinafter Am. Gaming Assoc./Andersen Micro Study]; Arthur Andersen, *Economic Impacts of Casino Gaming In the United States: Macro Study* (Dec. 1996) (prepared for the Am. Gaming Ass’n, lobbying group) [hereinafter Am. Gaming Assoc./Andersen Macro Study].

17. *Id.*

18. See, e.g., Editorial, *Gambling Payoff?*, WASH. POST, Feb. 10, 1997, at A18. See also John W. Kindt, *The Failure to Regulate the Gambling Industry Effectively: Incentives for Perpetual Non-Compliance*, 27 S. ILL. U. L.J. 219 (2003) [hereinafter *Gambling’s Perpetual Non-Compliance*].

19. NAT’L GAMBLING IMPACT STUDY COMM’N, FINAL REPORT (June 1999), available at <http://govinfo.library.unt.edu/ngisc/reports/fullrpt.html> [hereinafter NGISC FINAL REPORT].

20. *Id.* at introductory letter (Chair Kay C. James). For examples of analyses calling for the re-criminalization of gambling activities, see John W. Kindt & Stephen W. Joy, *Internet Gambling and the Destabilization of National and International Economies: Time for a Comprehensive Ban on Gambling Over the World Wide Web*, 80 DENV. U. L. REV. 111 (2002) [hereinafter *Gambling’s Destabilization of Economies*]; *Strategic Economic Base*, *supra* note 4.

21. See, e.g., Liz Benston, *Expert: Problem Gambling Study Flawed*, LAS VEGAS SUN, Mar. 31, 2003 at C1 [hereinafter *Gambling Flawed*] (countering a 2003 study on the social costs of gambling by Professor William Thompson, “the Nevada Resort Association [led by former pro-gambling NGISC Commissioner William Bible]—the chief lobbying group for Nevada casinos—commissioned a rebuttal report by Georgia College ... Assistant Professor Douglas Walker”). See generally, *The Gambling Impact Study Commission: Hearing Before the Senate Comm. on Governmental Affairs*, 104th Cong., 156-57 (1995) [hereinafter *Congressional Hearing on Gambling Impact Commission*].

increasingly towards other methods such as attacking the credibility of the academic community<sup>22</sup> and/or utilizing alleged intimidation tactics to circumvent or repress First Amendment debate.<sup>23</sup> Regardless, any decisionmaker needs to "follow the money" and be alert to any informational bias linked to pro-gambling financial interests.<sup>24</sup>

## II. DELIMITATION OF PROBLEMS

### A. GAMBLING WITH U.S. "MILITARY READINESS"

In the context of U.S. military readiness, the issues are first the *type* of gambling and secondly whether that gambling impacts the military. In 2001, the Department of Defense (DOD) produced its *Report on the Effect of the Ready Availability of Slot Machines on Members of the Armed Forces, Their Dependents, and Others*<sup>25</sup> (*DOD 2001 Slots Report*) which concluded that 2 percent of U.S. military personnel had a gambling problem, whereas the percentage for the general U.S. population was between .77 and 1.6 percent.<sup>26</sup> Although the *DOD 2001 Slots Report* was a cursory thirteen-page report, it basically confirmed earlier DOD reports of a pathological gambling problem of 2 percent among military personnel.

The 2001 report reiterated that the DOD's 1992<sup>27</sup> and 1998<sup>28</sup> reports indicated that there was a gambling problem among U.S. military

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22. See, e.g., *Gambling Flawed*, *supra* note 21, at C1; COLUM. JOURNALISM REV., *supra* note 1, at 36-38.

23. For an analysis of the First Amendment interface with the tobacco debate, see Donald W. Garner, *Fighting the Tobacco Wars on First Amendment Grounds*, 27 SW. U. L. REV. 379 (1998) [hereinafter *Wars on First Amendment*]. See also Press Release of Frank Fahrenkopf, CEO of Am. Gaming Assoc., Chicago, Ill. (May 21, 1998) (although most of the national press attended this press conference as concomitant to the hearings being conducted by the National Gambling Impact Study Commission, Frank Fahrenkopf's attacks on the academic community were ignored by all of the news media—except for the Las Vegas press).

24. See COLUM. JOURNALISM REV., *supra* note 1, at 36-38 and accompanying text.

25. SEC'Y DEF., U.S. DEP'T OF DEF., REPORT ON THE EFFECT OF THE READY AVAILABILITY OF SLOT MACHINES ON MEMBERS OF THE ARMED FORCES, THEIR DEPENDENTS, AND OTHERS (2001) [hereinafter *DOD 2001 SLOTS REPORT*].

26. NGISC FINAL REPORT, *supra* note 19, at 4-6, tbl. 4-2.

27. NAT'L TECH. INFORMATION SERV., U.S. DEP'T OF COMM., 1992 WORLDWIDE SURVEY OF SUBSTANCE ABUSE AND HEALTH BEHAVIORS AMONG MILITARY PERSONNEL at 12-14 to 12-30 [hereinafter *MILITARY PERSONNEL 1992 REPORT*].

28. ROBERT M. BRAY ET AL., 1998 DEP'T OF DEF. SURVEY OF HEALTH RELATED BEHAVIORS AMONG MILITARY PERSONNEL [hereinafter *DOD 1998 HEALTH AMONG*]

personnel—particularly with regard to slot machines, electronic gambling devices (EGDs), and video gambling devices (VGDs), which are collectively referenced by sociologists as the “crack cocaine” of creating new addicted gamblers—a nomenclature also recognized by the 1999 U.S. Gambling Commission.<sup>29</sup>

During Congressional hearings in 2000, U.S. Representative Roscoe Bartlett (R-Md.) questioned Alphonso Maldon, Assistant Defense Secretary, “about the wisdom of operating slot machines in ‘a military where a number of our young families are on food stamps’.”<sup>30</sup> During 1999, military personnel and civilian employees in the four Armed Services lost \$127 million in approximately 8,000 slot machines located in 94 overseas bases and other posts.<sup>31</sup> This scenario highlighted a historical resurgence of slot machine gambling on overseas military bases.

In 1969, the Senate Government Operations Committee subcommittee on investigations looked into improprieties in the operation of slot machines and other recreational activities at servicemen’s clubs overseas. Two years later, Army Secretary Robert F. Froehlke ordered the removal of slot machines from every Army post and base, citing a “corruptive influence.” The Air Force joined the Army in destroying thousands of machines; the Navy and Marines kept theirs in place.<sup>32</sup>

The Congressional hearings in 2000 prompted the *DOD 2001 Slots Report*.

#### B. THE FLOYD D. SPENCE NATIONAL DEFENSE ACT

In the Floyd D. Spence National Defense Act, Public Law 106-398,<sup>33</sup> approved on October 30, 2000, the U.S. Secretary of Defense was required to submit another report to Congress,

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29. Laurence Arnold, *Overseas Slot Machines Are Military's Billion-Dollar Gamble*, Jan. 13, 2001, at 1, available at <http://lexis-nexis.com> [hereinafter *Slot Machines Military's Gamble*]. See also Viveca Novak, *They Call It Video Crack*, TIME, June 1, 1998, at 58 [hereinafter *Video Crack*]. See generally, NGISC FINAL REPORT, *supra* note 19, at 5-5.

30. *Slot Machines Military's Gamble*, *supra* note 29.

31. *Id.*

32. *Id.*

33. Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001, Pub. L. No. 106-398, 114 Stat. 1654 (2000).

evaluating the effect that the ready availability of slot machines as a morale, welfare, and recreation activity on United States military installations outside of the United States has on members of the military, their dependents, and other persons who use such slot machines, the morale of military communities overseas, and the personal financial stability of members of the Armed Forces.<sup>34</sup>

The report was required to include an estimate of the number of persons who used the slot machines over the preceding two years, giving a percentage breakdown into the following groups: enlisted members, officers, DOD civilians, other U.S. persons, and foreign nationals.<sup>35</sup> The law also required the Defense Department to give information on military personnel showing the number (as a percentage and by pay grade) who had "sought financial services counseling at least partially due to the use of such slot machines;" or "qualified for Government financial assistance at least partially due to the use of such slot machines;" or "had a personal check returned for insufficient funds or received any other nonpayment notification from a creditor at least partially due to the use of such slot machines;" and also report the "average amount expended by each category" of personnel.<sup>36</sup>

Representative Bartlett's concerns prompted provisions to require the *DOD 2001 Slots Report* to analyze the impact of video gambling machines and devices on military personnel.<sup>37</sup> The research contract was won by PricewaterhouseCoopers.<sup>38</sup> It was anticipated that an in-depth report would be forthcoming, however,

[t]he firm's study was abruptly cancelled midway through the process ... The Pentagon claimed that the consultants' plans were not what Congress wanted, according to Lisa Wright, Bartlett's press secretary . . . "The Pentagon decided to do the study in-house," said Ms. Wright. PricewaterhouseCoopers declined comment ... Not just any section of the Pentagon took over the research. The

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34. *Id.* at § 336(a).

35. *Id.* at § 336(b)(1).

36. *Id.* at §§ 336(b)(2)(A)-(C), (b)(3).

37. Maura Casey, *Military Secrets: Gambling Problems Stay Hushed Up*, THE DAY (New London, Conn.), Mar. 17, 2002, at H1, H4 [hereinafter Casey].

38. *Id.*



Morale, Welfare, and Recreation Department—the very department that uses profits from slot machines—conducted the study, according to the Pentagon. The thirteen-page report was highly supportive of slot machines.<sup>39</sup>

Accordingly, it would be difficult to find agreement with any suggestion that this cursory thirteen-page, conflict-of-interest report was the final word on gambling addiction in the U.S. military—as was argued by William Eadington of the University of Nevada at Reno.<sup>40</sup>

#### C. DOD 2001 SLOTS REPORT ON THE EFFECT OF SLOT MACHINES

After reviewing the information available, and as Mr. Eadington highlighted, it was “the Department’s opinion that the presence of slot machines in Morale, Welfare, and Recreation facilities overseas does not have a negative effect on the morale or financial stability” of their forces, forces’ families, or civilian employees.<sup>41</sup> However, the *DOD 2001 SLOTS REPORT* did indicate that there were “instances where slot machine use has had a negative impact on specific individuals.”<sup>42</sup> Actually, the *1998 Department of Defense Survey of Health Related Behaviors Among Military Personnel (DOD 1998 Health Among Military Report)* had already found that about 2.2 percent of military personnel had the indicators of probable pathological gambling (compared with .77 to 1.6 percent in the general public),<sup>43</sup> but the thirteen-page *DOD 2001 SLOTS REPORT* equivocated that “these results should not be considered to be a conclusive indication that the prevalence of pathological gambling is higher in the military personnel than among civilians.”<sup>44</sup> This equivocation was a *non sequitur* because the reported numbers were indeed a “conclusive indication” that pathological gambling was higher in the military than in the general public—as reported by several in-depth analyses to the 1999 U.S. National Gambling Impact Study Commission.<sup>45</sup> Senior commanders on the bases concluded that “the presence [as opposed to use] of these

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39. *Id.*

40. Eadington Comment, *supra* note 5, at n.5.

41. DOD 2001 SLOTS REPORT, *supra* note 25, at 3. See Eadington Comment, *supra* note 5, at n.5.

42. DOD 2001 SLOTS REPORT, *supra* note 25, at 3.

43. DOD 1998 HEALTH AMONG MILITARY, *supra* note 28.

44. DOD 2001 SLOTS REPORT, *supra* note 25, at 6.

45. Compare *id.*, with NGISC FINAL REPORT, *supra* note 19, at 4-6, tbl. 4-2.

machines produces no causative negative impact on morale or financial well being of the force."<sup>46</sup> The *DOD 2001 SLOTS REPORT* justified itself stating that the Services' slot machines "include a high rate of return to the player and high payout frequencies" combined with limited payout amounts to discourage players from losing too much of their money by going for big jackpots.<sup>47</sup> However, these arguments were illusory because they ignored the fundamental principles that slot machines are inherently designed: to lure in the player, to keep the player thinking he is winning when he is in fact losing, and eventually to take as much of the player's assets as possible.

The *DOD 2001 SLOTS REPORT* also claimed that the Services' slot machines were neither promoted nor encouraged, but it was highlighted that the revenue generated from slot machines constituted "a major component of each Services' ability to fund nonappropriated fund programs, capital investments and major construction."<sup>48</sup> Importantly, the *DOD 2001 SLOTS REPORT* indicated that the "[l]oss of this revenue source could not be replicated,"<sup>49</sup> which perhaps indicated that monetary considerations and creating the appearance of military readiness were driving the *DOD 2001 SLOTS REPORT* because it contradicted not only the DOD's 1992 and 1998 reports,<sup>50</sup> but also the *Final Report* of the National Gambling Impact Study Commission.<sup>51</sup>

The analysis and conclusions in the thirteen-page *DOD 2001 SLOTS REPORT*, as well as the conflicts of interest in its authorship, were sharply criticized in the press.<sup>52</sup> The *DOD 2001 SLOTS REPORT* was also compelled to contradict earlier complaints about gambling from U.S. Command Personnel. In 1995, General John M. Loh, Commander of the United States Air Force (USAF) at Langley Air Force Base (AFB), replied to a letter from U.S. Representative Herbert H. Bateman requesting General Loh's views on the subject of riverboat gambling.<sup>53</sup> General Loh stated, "I am generally opposed to riverboat gambling near our bases because of the problems it creates for our people and the communities in which they

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46. DOD 2001 SLOTS REPORT, *supra* note 25, at 3.

47. *Id.*

48. *Id.* at 8.

49. *Id.* at 13.

50. See MILITARY PERSONNEL 1992 REPORT, *supra* note 27; DOD 1998 HEALTH AMONG MILITARY, *supra* note 28, and accompanying text.

51. NGISC FINAL REPORT, *supra* note 19, at 4-6, tbl. 4-2.

52. See, e.g., Casey, *supra* note 37, at H1, H4.

53. Letter from Gen. John M. Loh, Commander, U.S. Air Force, to U.S. Rep. Herbert H. Bateman, Congressman (Feb. 10, 1995) (on file with U.S. Rep. Herbert H. Bateman).

live."<sup>54</sup> General Loh also explained that key indicators of gambling's effect on social and family issues had increased since the opening of riverboat gambling operations near Barksdale AFB in Louisiana.<sup>55</sup> In closing, the General indicated: "These are my personal views and do not reflect any official position of the Air Force or DoD."<sup>56</sup>

A related 1995 memorandum to Virginia cities from business-related representatives of Know Casinos, a non-profit organization dedicated to "providing Virginia with factual information on riverboat gambling," gave a brief overview of the negative issues surrounding riverboat gambling and the military, including some specific information about the military base in Tidewater, Virginia.<sup>57</sup> The memorandum concluded that "[r]iverboat gaming will drive our military away and cause us to lose whatever new opportunities might become available."<sup>58</sup> The business-oriented authors also found it hard to accept that city leaders would continue to seek gambling when there was "such an obvious negative impact."<sup>59</sup>

#### D. INFORMATIONAL SOURCES ON GAMBLING ISSUES: THE POTENTIAL IMPACT OF THE FINANCIAL AURA OF PRO-GAMBLING INTERESTS

##### 1. *Attempted Censorship by Pro-Gambling Interests?*

In 1998 Christopher Anderson, the Director of the Illinois Council on Problem and Compulsive Gambling, served together on a three-person panel with William Eadington and John Kindt and testified under oath before the U.S. National Gambling Impact Study Commission.<sup>60</sup> While the opportunity for debate was obvious, pro-gambling interests did not challenge or address any of the issues raised involving the substantial socio-economic costs of legalizing gambling activities,<sup>61</sup> but instead those

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54. *Id.*

55. *Id.*

56. *Id.*

57. Memorandum from Know Casinos, Business Group, to Virginia Cities, (Sept. 1, 1995) (on file with Know Casinos).

58. *Id.*

59. *Id.*

60. Christopher Anderson, William Eadington, and John W. Kindt, Panel Testimony before the National Gambling Impact Study Commission (May 21, 1998); NGISC FINAL REPORT, *supra* note 19, and accompanying text.

61. Tables of the socio-economic costs of new addicted gamblers, bankruptcies, and crime caused by decriminalized organized gambling, as presented at this hearing of the

interests waited until 2003 before attempting any substantial rebuttal to refute the socio-economic costs reported by several academics.<sup>62</sup> However, Christopher Anderson's testimony before the Commission, although tactful, still cost Anderson his livelihood.

The controversy erupted after the council's outspoken executive director, Christopher Anderson, publicly criticized the casino boats for being too liberal with credit and allowing hard-luck gamblers to dig themselves deeper into debt. He says the Illinois Casino Gaming Assn. promptly accused him of "biting the hand that feeds him." Soon, he says, he was notified in writing that the council's funding for the new year would be on a month-to-month basis, with a 10-day termination clause.<sup>63</sup>

Since the Illinois Council was almost totally supported by \$160,000 from the Illinois riverboat operators, their financial leverage was considerable. These actions by the gambling industry were "interpreted as interference and intimidation" by the Illinois Council.<sup>64</sup> "Outraged, Anderson says the council severed its casino ties, closed its offices to save money and moved into his living room."<sup>65</sup> According to Anderson, "[e]veryone out there with casino money is obligated to stroke the casinos .... To the extent that any of us accept dollars from the industry ... without the expectation that there are strings attached, then we're the fools."<sup>66</sup> Representatives of the Illinois casino association countered that they simply transferred their support to a private firm.<sup>67</sup>

The criticism of "censorship attempts" by pro-gambling interests was also exemplified after a September 1993 seminar at Lake Tahoe, when

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1999 U.S. Gambling Commission, were subsequently published as tables in John W. Kindt, *The Costs of Addicted Gamblers: Should the States Initiate Mega-Lawsuits Similar to the Tobacco Cases?*, 22 *MANAGERIAL & DECISION ECON.* 17, Tables (2001) [hereinafter *Mega-Lawsuits*]. See also John W. Kindt & John K. Palchak, *Legalized Gambling's Destabilization of U.S. Financial Institutions and the Banking Industry: Issues in Bankruptcy, Credit, and Social Norm Production*, 19 *EMORY U. BANKRUPTCY DEV. J.* 21 (2002) [hereinafter *Gambling's Destabilization of Financial Institutions*].

62. See, e.g., *Gambling Flawed*, *supra* note 21, and accompanying text.

63. Matea Gold, *Treatment Options Scarce for Gamblers*, L.A. TIMES, Dec. 15, 1998, at A1 [hereinafter *Treatment Options*].

64. *Id.*

65. *Id.*

66. *Id.*

67. *Id.*

Whittier Law Professor I. Nelson Rose "ticked off"<sup>68</sup> Tom Tait, the executive director of Nevada's Commission on Tourism, who issued "an official state press release"<sup>69</sup> alleging that "in his presentation before the conference, I. Nelson Rose accused Nevada gaming officials and gaming executives of being in 'cahoots,' calling their relationship corrupt."<sup>70</sup> Thereafter, Tait "uninvited" Professor Rose from a December statewide Nevada convention on travel and tourism by removing Rose from the list of speakers.<sup>71</sup> The statewide press editorialized against these actions limiting Professor Rose from expressing his viewpoint.<sup>72</sup>

Zounds. How dare this rapsallion Rose say such a thing. No Nevada gaming official has ever gone to work for the industry the day after he or she quit, right? No juice law firm or gambling company would ever hire an ex-regulator, would they? No law or p.r. firm ever got a rack of politicians elected and then brokered influence in favor of gaming license applicants, correct? And nobody has ever accused the Nevada Supreme Court of jumping through hoops for the gambling-industrial complex, especially on those messy fire-at-will and employee wrongful termination cases.

Iconoclastic Nelson Rose apparently committed the unpardonable sin: he categorized the obvious, making him pariah non grata at the Reno Hilton extravaganza. Rose was needed.<sup>73</sup>

Mirroring First Amendment censorship issues, similar instances have occurred with other academics<sup>74</sup> when interfacing with hypersensitive

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68. Andrew Barbano, Editorial, *Clipping Coupons to Buy the Emperor New Clothes*, THE TRIBUNE (Reno, Nev.), Dec. 19, 1993 [hereinafter *Buy the Emperor New Clothes*].

69. *Id.*

70. *Id.*

71. Wayne R. Melton, *Panel Director Cuts Expert from List of Conference Speakers*, RENO GAZETTE-J., Dec. 11, 1993, at C8; see Editorial, *Gaming Critic Should Have Been Admitted*, RENO GAZETTE-J., Dec. 15, 1993, at 11A [hereinafter *Gaming Critic Should Have Been Admitted*].

72. See, e.g., Melton, *supra* note 71; *Gaming Critic Should Have Been Admitted*, *supra* note 71.

73. *Buy the Emperor New Clothes*, *supra* note 68.

74. See, e.g., Press Release, Senate Republican Leadership, Conference at Foxwoods Gives Long Odds on the Truth, Conn. Capitol Press Room, Nov. 8, 1995. See also David Ferrell & Matea Gold, *Casino Industry Fights an Emerging Backlash*, L.A.

pro-gambling interests. As exemplified at a 1995 Boston Federal Reserve Bank Conference, gambling company representatives have also apparently sent disparaging letters behind-the-scenes to conference organizers, trying to discredit academic attendees/speakers, such as Professor Rose.<sup>75</sup>

As indicated in the *Mega-Lawsuits* article, those familiar with the topics in gambling research typically agree that it is difficult to find objective research regarding the impact of legalized gambling on communities.<sup>76</sup> In fact, "[m]uch of the research that has been used in government decision making was prepared by researchers with close ties to the gambling industry."<sup>77</sup> As summarized by Professor Henry Lesieur of the Institute for Problem Gambling in Connecticut:

There isn't one piece of research the industry has funded on the social costs of problem gambling that is academically respectable. It's all self-serving. . . . It says a lot about the nature of the field that research funded by the industry is going to dominate the dialogue for the next few years. That is a sad state.<sup>78</sup>

State and federal government officials began to recognize these problems at the end of the 1990s and expressed their frustration.

## 2. *The American Gaming Association's "Clearinghouse of Information"*

In 1996, the lobbying group for the gambling industry, the American Gaming Association (AGA), headed by Frank Fahrenkopf, announced that part of the AGA's responsibility was "to develop a clearinghouse for addressing industry issues, including problem gambling."<sup>79</sup> In this "clearinghouse" context, concerns were raised about potential conflicts of interest, such as in the following piece in the *Los Angeles Times*:

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TIMES, Dec. 14, 1998, at A1 [hereinafter *Casino Backlash*] (describing alleged harassment of UNLV Prof. William Thompson). See also *Wars on First Amendment*, *supra* note 23.

75. Joan Vennoch, *High Stakes*, BOSTON GLOBE, May 31, 1995, at 39.

76. Meir Gross, *Legal Gambling as a Strategy for Economic Development*, 12 ECON. DEV. Q. 203, 204 (1998).

77. *Id.* at 204. See generally, *Mega-Lawsuits*, *supra* note 61.

78. *Casino Backlash*, *supra* note 74, at A24.

79. *Gaming Association Acts as Clearinghouse*, RENO GAZETTE-J. (Reno, Nev.), Oct. 27, 1996, at B5 (emphasis added) [hereinafter *AGA Clearinghouse*].

For years, [Howard] Shaffer had voiced some of the harshest warnings in academia against the collateral damage of gambling's growth. No longer, not since he accepted nearly \$600,000 in grants from the industry in little more than a year.

Through Fahrenkopf's *intervention*, Shaffer was awarded the first grant by the industry-backed research center [NCRG]—\$139,000 ....<sup>80</sup>

The largely industry-financed National Center for Responsible Gaming (NCRG), which had AGA lobbyist Frank Fahrenkopf as a Board Member, was delimited as "the first national organization to serve as a clearinghouse for information concerning problem and underage gambling."<sup>81</sup> It was also reported that the NCRG's Advisory Board would "have control over the research agenda and findings."<sup>82</sup> Additional public concerns involving research funded by pro-gambling interests were mentioned.

The content of this first study by Shaffer was criticized,<sup>83</sup> and it also did not report the most important baseline numbers for the 120-152 studies analyzed,<sup>84</sup> which made it impossible for other academics to check and verify.<sup>85</sup>

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80. *Casino Backlash*, *supra* note 74, at A1 (emphasis added). For criticisms and debates regarding academics receiving inordinate amounts of funding from pro-gambling interests, see, e.g., Letter to the Editor from Jennifer Borrell, *THE WAGER*, available at <http://www.thewager.org/editorial.htm> (Apr. 3, 2003) (on file with the author); Letter to the Editor from Jacques Boulet, *THE WAGER*, available at <http://www.thewager.org/editorial.htm> (Apr. 3, 2003) (on file with the author).

81. Charles Ruud, *Harvard Studies Gambling*, *FLORIDA PLAYER*, Summer 1996, at 3 (apparently from a press release of the National Center for Responsible Gaming).

82. *Id.* (emphasis added).

83. *Casino Backlash*, *supra* note 74, at A1; see Loretta Tofani, *Gambling Industry Seeks a Winning Image*, *PHILA. INQUIRER*, July 6, 1998, at A1 [hereinafter *Gambling Seeks Image*].

84. *Casino Backlash*, *supra* note 74, at A1; *Gambling Seeks Image*, *supra* note 83, at A1. See Howard J. Shaffer, Matthew N. Hall & Joni Vander Bilt, DIV. ADDICTIONS, HARVARD MEDICAL SCHOOL, App. 2, *Estimating the Prevalence of Disordered Gambling Behavior in the United States and Canada: A Meta-analysis*, (Dec. 15, 1997) [hereinafter *Harvard Addictions Meta-analysis*]; Press Release of Harvard Medical School, *Harvard Medical School Researchers Map Prevalence of Gambling Disorders in North America*, (Dec. 4, 1997) (stating that from .84 percent in 1993 "the prevalence rate for 1994-1997 grew to 1.29 percent of the adult population") [hereinafter *Harvard Division on Addictions Press Release*].

85. For press criticisms, see *Casino Backlash*, *supra* note 74, at A1 (a classic series

Despite requests dating to 1998,<sup>86</sup> and despite promising to provide these numbers during a 4 May 2000 conference sponsored by the NCRG at the University of Illinois at Chicago Medical Center,<sup>87</sup> by the end of 2000, Associate Professor Shaffer had apparently not provided the requested baseline numbers<sup>88</sup>—a fairly simple procedure.<sup>89</sup>

To avoid these types of issues, academics should be sensitized to making data readily accessible and consider disassociating themselves from the NCRG, which even industry reports have delimited as the “Center of Controversy.”<sup>90</sup>

These types of scenarios are illustrative of the problematic situations in which academics/experts can find themselves. As summarized by a *Los Angeles Times* article in December 1998, “Shaffer is now working on a new project for the industry’s research arm [the NCRG]—of which *he is a board member*—for \$465,000, more than triple the amount of the first award.”<sup>91</sup> Supposedly concerned with some research issues at the NCRG during this time frame,<sup>92</sup> Professor Henry Lesieur and Dr. Richard Rosenthal terminated their relationship with the NCRG research board.

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in the L.A. TIMES); *Gambling Seeks Image*, *supra* note 83; David L. Wheeler, *A Surge of Research on Gambling is Financed in Part by the Industry Itself*, CHRON. HIGHER EDUC., Mar. 5, 1999, at A17-18 [hereinafter *Research Financed by Industry*]; Virginia Young, *Gambling Addiction: A No-Win Wager: Casinos Fund Problem Gambling Research; Critics Worry About their Influence*, ST. LOUIS POST-DISPATCH, Feb. 10, 2000, at A9-A10 [hereinafter Young]; *Critics Question Casinos’ Commitment to Finding Cause of Gambling Addiction*, ST. LOUIS POST-DISPATCH, Feb. 10, 2000, at A1.

86. Prof. John Warren Kindt, Univ. of Ill., Statement to the National Gambling Impact Study Commission, *U.S. and International Concerns Over the Socio-Economic Costs of Legalized Gambling: Greater than the Illegal Drug Problem?* Chicago, Ill. (May 21, 1998) [hereinafter *U.S. and International Costs*].

87. Speaker’s Question and Answer Session with Assoc. Prof. Howard Shaffer, *Understanding Gambling and Its Potential Health Consequences*, Medical Ctr., Univ. of Ill., Chicago, Ill. (May 4, 2000) (registration through the National Center for Responsible Gaming).

88. See, e.g., Letter from Univ. of Ill. Research Assoc., to Assoc. Prof. Howard Shaffer (May 10, 2000) (requesting baseline numbers); Letter from Assoc. Prof. Howard Shaffer to Univ. of Ill. Research Assoc. (May 31, 2000) (stating uncertainty and declining to provide the numbers).

89. *Mega-Lawsuits*, *supra* note 61, at 27. See also footnote 80, *supra* and accompanying text.

90. Dave Palermo, *Center of Controversy*, CASINO EXEC. REP., Sept. 2001, at 4 [hereinafter *Center of Controversy*].

91. *Casino Backlash*, *supra* note 74, at A1 (emphasis added).

92. See generally, *id.*



With regard to the NCRG's research, one criticism is that it is pre-directed: "[t]hey have an agenda," says Valerie Lorenz, executive director of the Compulsive Gambling Center Inc. in Baltimore. If the industry can say something is neurologically wrong with a problem gambler, 'then it's not the casinos' responsibility,' she says."<sup>93</sup>

Among other academics, Professor Henry Lesieur and Dr. Richard Rosenthal appeared to have made some difficult decisions concerning their academic independence. In the Twenty-First Century, more academics beginning research into gambling issues would be faced with ethical decisions, and it became increasingly important to delimit the origins and parameters of the issue areas.

### 3. *The Credibility of Pro-Gambling Interests: Issues Involving Impeachment*

#### a. *The Gravamen of Gambling Issues*

The result of having industry-influenced academics and experts was that incomplete studies were often created to flood decisionmakers with information that obfuscated the obvious facts that legalized gambling activities were addictive and destructive to local and national economic systems. While the credibility of some academics/experts could be impeached by showing the financial influence and other tactics the gambling industry uses to influence information, that credibility could also be criticized by analyzing the implausible and nonsensical claims of the industry. In 2003, apologists for the gambling industry tried to refute the principles establishing the addictive nature of Video Gambling Devices (VGDs)<sup>94</sup> and discounted the negative socio-economic impacts of gambling activities.<sup>95</sup>

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93. Young, *supra* note 85.

94. See *Video Crack*, *supra* note 29, at 58. See also *Casino Backlash*, *supra* note 74, at A1.

95. *Video Crack*, *supra* note 29, at 58; *Casino Backlash*, *supra* note 74, at A1. See generally, *Gambling Flawed*, *supra* note 21.

*b. The Crack Cocaine of Creating New Addicted Gamblers:  
Electronic/Video Gambling Devices*

Defenders of the gambling industry are exemplified by the arguments of William Eadington, who has implied that electronic gambling devices (EGDs) and video gambling machines (VGMs) are not addictive and that comparing them to drug addictions constitutes an overreaction.<sup>96</sup> The fact, however, is that it is generally accepted within the sociological community that pathological gambling can be fairly compared to drug addiction.<sup>97</sup> Even Eadington's associate and co-editor of the *Journal of Gambling Studies*, Associate Professor Howard Shaffer, who serves at the Harvard Division on Addictions and who has conducted studies financed by pro-gambling interests, has made several comparisons between pathological gambling and the addictive nature of drugs. In 1997 Shaffer concluded that gambling problems were "approaching the level of social problems such as drug abuse."<sup>98</sup> In the 1999 National Gambling Impact Study Commission's *Final Report*, Shaffer is quoted as follows: "The director of the Harvard Medical School's Division on Addiction Studies, Dr. Howard J. Shaffer, likened the Internet to new delivery forms for addictive narcotics. He states, 'As smoking crack cocaine changed the cocaine experience, I think electronics is going to change the way gambling is experienced.'"<sup>99</sup>

In another instance, Shaffer reiterated his findings:

One of the nation's foremost experts on gambling addiction, Harvard Medical School Professor Howard Shaffer, was the first to call video poker the "crack cocaine of gambling." . . .

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96. See Eadington Comment, *supra* note 5.

97. See, e.g., Marvin A. Steinberg, Therese A. Kosten, & Bruce J. Rounsaville, *Cocaine Abuse and Pathological Gambling*, 1 AM. J. ADDICTIONS 121, 122-132 (Spring 1992); *Adolescent Gambling and Problem Gambling in Alberta*, ALTA. ALCOHOL & DRUG ABUSE COMM'N, (Wynne Resources, Ltd. 1994); *Alberta Adolescent Substance Use Increases with Gambling Involvement*, THE WAGER, Oct. 1996, at 1; Bill Lindelof, *Gambling Now Perceived More as Entertainment than Sin*, SACRAMENTO BEE, Apr. 8, 1998, at A1.[hereinafter Lindelof] (according to Howard Shaffer's 1997 study, gambling problems were "approaching the level of social problems such as drug abuse"). *Contra* Eadington Comment, *supra* note 5.

98. Lindelof, *supra* note 97.

99. NGISC FINAL REPORT, *supra* note 19, at 5-5.

"These fast-acting games are like fast-acting drugs. You get a rush (when you win), and then you're off, and you're still there to play again," he added.

Even though no drug is involved, Shaffer said many gambling addicts show some signs of physical withdrawal when they stop feeding their habit—just as if they were hooked on heroin and in need of a fix.<sup>100</sup>

Shaffer even drew comparisons between gambling addiction and the mega-lawsuits involving the smokers who pursued the 1990s tobacco litigation. "Shaffer said some *gambling addicts* have sued slot machine manufacturers, following the example set by victims of cigarette smokers who went after tobacco companies ... None of it has been successful yet, but it wasn't for the tobacco industry for a long time" (emphasis added).<sup>101</sup>

As early as 1994, Shaffer summarized these issues and reportedly concluded as follows,

between 3.5 and 5 percent of those adults exposed to gambling can be expected to develop into pathological gamblers. Even more disturbing, the percentage is higher (6 to 8.5 percent) for college and high school students, according to Shaffer's most recent research. "It's like crack was to cocaine. It's becoming too easy to gamble."<sup>102</sup>

Accordingly, Mr. Eadington has little academic support for his apparent rejection of the sociologists' identifier for video gambling and other "fast gambling" mechanisms as the "crack cocaine" of creating new pathological (addicted) gamblers.

*c. The Socio-Economic Costs of Decriminalized Organized Gambling*

From an academic perspective, Mr. Eadington is also unconvincing when he repeatedly tries to refute Nobel-Prize Laureate Paul Samuelson's<sup>103</sup> conclusions about the negative economic impacts of

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100. Scott Dyer, Capital News Bureau, *Professor Says Video Poker 'Crack Cocaine' of Gambling*, ADVOC., Feb. 16, 2001.

101. *Id.*

102. COLUM. JOURNALISM REV., *supra* note 1, at 38.

103. Paul Samuelson won the Nobel Prize for Economics in 1970.

gambling activities.<sup>104</sup> Nor does Mr. Eadington appear to grasp the significance that Professor Samuelson's comments constitute basic textbook economics.<sup>105</sup>

In particular, Mr. Eadington criticizes the references to Professor Samuelson's comments which highlight the negative economic impacts of gambling activities. Eadington has implied that references in Professor Samuelson's textbook may have consisted of offhand comments which Samuelson had not seriously studied.<sup>106</sup> The Samuelson quote at issue stated:

[Gambling] involves simply *sterile transfers of money or goods* between individuals, creating no new money or goods. Although it creates no output, gambling does nevertheless absorb time and resources. When pursued beyond the limits of recreation, where the main purpose after all is to "kill" time, gambling subtracts from the national income.<sup>107</sup>

Mr. Eadington's implication, however, that Professor Samuelson has not seriously analyzed the economics of gambling activities, is also dispelled by referencing the classic 1948 article by Milton Friedman and L. J. Savage, entitled *The Utility Analysis Of Choices Involving Risk*,<sup>108</sup> which constituted an in-depth academic study of utility and gambling activities. This study was an exhaustive analysis of the general principles enumerated in Samuelson's textbook in his section *Gambling and Diminishing Marginal Utility*. More importantly, when this classic Friedman and Savage article was reprinted in 1952, the authors made a "grateful" acknowledgement to Paul Samuelson who had obviously studied their article and who had suggested the one correction which was incorporated into the reprinted version of the article.<sup>109</sup>

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104. See Eadington Comment, *supra* note 5.

105. See, e.g., PAUL A. SAMUELSON, *ECONOMICS* 425 (10th ed. 1976).

106. *Id.*

107. PAUL A. SAMUELSON, *ECONOMICS* 398 (11th ed. 1980) (emphasis added); compare with PAUL A. SAMUELSON, *ECONOMICS* 425 (10th ed. 1976). See generally, John W. Kindt, *Diminishing or Negating the Multiplier Effect: The Transfer of Consumer Dollars to Legalized Gambling; Should a Negative Socio-Economic "Crime Multiplier" be Included in Gambling Cost/Benefit Analyses?*, 2003 MICH. ST. DCL L. REV. 281 [hereinafter *Gambling's Crime Multiplier Effect*].

108. Milton Friedman & L. J. Savage, *The Utility Analysis Of Choices Involving Risk*, 56 J. POL. ECON., 279-304 (1948).

109. Milton Friedman & L. J. Savage, *The Utility Analysis of Choices Involving*

John Kenneth Galbraith referred to Samuelson as the "most influential [economics] teacher of our time,"<sup>110</sup> but Samuelson's views on gambling have been repeatedly attacked by the American Gaming Association. The American Gaming Association, lobbying for the gambling industry, has even claimed that legalized gambling activities have an economic multiplier effect of "four,"<sup>111</sup> a nonsensical claim. As decriminalized organized gambling spread throughout the U.S. economy of the 1990s, the increased commentary, which Samuelson devoted to the gambling/economic interface, was illustrative. For example, Samuelson reaffirmed his position in a later edition of his text which is significant enough to quote at length:

Gambling has historically been a "vice" that was -- along with illegal drugs, commercial sex, alcohol and tobacco -- a "consumption activity" discouraged by the state. Attitudes about such vices ebb and flow. Over the last two decades, attitudes toward gambling became permissive as those toward drugs and tobacco hardened. . . . [The] spread [of gambling] was accompanied by the rapid growth of state lotteries. Overall, gambling has been one of the fastest growing sectors of the (legal) economy in the last two decades [1980s and 1990s].<sup>112</sup>

Samuelson also differentiated economic speculation from decriminalized organized gambling—which gambling lobbyists frequently argue are the same concept in their efforts to decriminalize more gambling activities as the Twenty-First Century began.

Gambling is a differential animal from speculation. While ideal speculative activity increases economic welfare, gambling raises serious economic issues. To begin with, aside from recreational value, gambling does not create

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*Risk*, reprinted in AMERICAN ECONOMIC ASSOCIATION, READINGS IN PRICE THEORY 57-96 (Prof. Samuelson acknowledged in introductory footnote and in footnote 24 on page 71).

110. JOHN KENNETH GALBRAITH, *ECONOMICS AND THE PUBLIC PURPOSE* 4 (Houghton Mifflin Co., Boston 1973).

111. Panel Discussion of the American Gaming Assoc. and Casino Company Representatives, Nat'l Press Foundation Conf., Arlington, Va., Jan. 13-15, 1997. *See also Gambling's Crime Multiplier Effect*, *supra* note 107.

112. PAUL A. SAMUELSON & WILLIAM D. NORDHAUS, *ECONOMICS* 208-09 (17th ed. 2001).

goods and services. In the language of game theory ... gambling is a "negative-sum game" for the players—the customers are (almost) sure to lose in the long run because the house takes a cut of all bets. In addition, by its very nature gambling increases income inequality. People who sit down to the gambling table with the same amount of money go away with widely different amounts. A gambler's family must expect to be on top of the world one week only to be living on crumbs and remorse when luck changes. Some observers also believe that gambling has adverse social impacts. These include addiction to gambling, neighborhood crime, political corruption, and infiltration of gambling by organized crime.

Given the substantial economic case against gambling, how can we understand the recent trend to legalize gambling and operate government lotteries? One reason is that when states are starved for tax revenues, they look for new sources; they rationalize lotteries and casinos in a way to channel private vices to the public interest by skimming off some of the revenues to finance public projects. In addition, by bringing gambling above ground, legal gambling may drive out illegal numbers rackets and take some of the profitability out of organized crime. Notwithstanding these rationales, many observers raise questions about an activity in which the state profits by promoting irrational behavior among those who can least afford it.<sup>113</sup>

While individualized gambling activities have accompanied the history of mankind, government-sanctioned gambling activities, including those by military organizations, have historically resulted in socio-economic negatives that outweighed any positives.<sup>114</sup> Furthermore, gambling activities constitute a "sterile transfer of wealth" which restricts genuine economic growth. The opportunity costs to those governments which legalize gambling activities consist, in part, of lost worker and

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113. *Id.*; see *Gambling's Destabilization of Financial Institutions*, *supra* note 61, at 54-56.

114. See generally, *Gambling's Destabilizing Economies*, *supra* note 6; *Gambling's Destabilization of Economies*, *supra* note 20; *Gambling's Perpetual Non-Compliance*, *supra* note 18.

military productivity as well as lost "consumer dollars."<sup>115</sup> While the introduction of gambling-oriented dollars into a local economy may have a multiplier effect, there is a growing body of evidence that in most economic scenarios the gambling multiplier is significantly less than the lost multiplier associated with lost consumer dollars.<sup>116</sup>

Accordingly, governments and concomitant military organizations have experimented with legalized (or tolerated) gambling activities throughout history, sometimes referenced as waves of gambling. As the public and the military have relearned the significant costs which invariably accompany gambling, governments have reverted to the recriminalization of gambling activities.<sup>117</sup>

These examples suggest the absence of credibility by informational sources linked to the financial aura of the gambling industry, but they are not the only instances. Attacks on academics by pro-gambling interests demonstrate how pro-gambling misinformation can enter the decisionmaking environment and lead to the reliance of well-intentioned decisionmakers on information of dubious quality and credibility.

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115. *Gambling's Destabilizing Economies*, *supra* note 6; *Gambling's Destabilization of Economies*, *supra* note 20; *Gambling's Perpetual Non-Compliance*, *supra* note 18; *Gambling's Destabilization of Financial Institutions*, *supra* note 61, at 56. See *Gambling's Crime Multiplier Effect*, *supra* note 107. See also, John W. Kindt, *The Economic Impacts of Legalized Gambling Activities*, 43 DRAKE L. REV. 51, Table 3 (1994).

116. *Gambling's Destabilizing Economies*, *supra* note 6; *Gambling's Destabilization of Economies*, *supra* note 20; *Gambling's Perpetual Non-Compliance*, *supra* note 18; *Gambling's Destabilization of Financial Institutions*, *supra* note 61, at 56. See *Gambling's Crime Multiplier Effect*, *supra* note 107. See also John W. Kindt, *Legalized Gambling Activities: The Issues Involving Market Saturation*, 15 N. ILL. U. L. REV. 271 (1995).

117. *Gambling's Destabilizing Economies*, *supra* note 6; *Gambling's Destabilization of Economies*, *supra* note 20; *Gambling's Perpetual Non-Compliance*, *supra* note 18; *Gambling's Destabilization of Financial Institutions*, *supra* note 61, at 56. See, e.g., *Strategic Economic Base*, *supra* note 4, at 584; *Congressional Gambling Hearing 1995*, *supra* note 4, at 527, 545; *The National Impact of Casino Gambling Proliferation: Hearing before the House Comm. on Small Business*, 103d Cong., 2d Sess. at 77, 79-80, nn.9-12 [hereinafter *Congressional Gambling Hearing 1994*]. John W. Kindt, *The Business-Economic Impacts of Licensed Casino Gambling in West Virginia: Short-Term Gain but Long-Term Pain*, 13 W. VA. U. PUB. AFF. REP. 22 (1996).

### III. CLARIFICATION OF GOALS

#### A. THE 1998 DEPARTMENT OF DEFENSE SURVEY OF HEALTH RELATED BEHAVIORS AMONG MILITARY PERSONNEL<sup>118</sup>

The *DOD 1998 Health Among Military Report* provided “comprehensive and detailed estimates of the prevalence of alcohol, illicit drug, and tobacco use and the negative effects of alcohol use”<sup>119</sup> and gave estimates for health behaviors “pertaining to fitness and cardiovascular disease risk reduction, injuries and injury prevention, and sexually transmitted disease risk reduction.”<sup>120</sup> The 1998 Report also offered “an assessment of the mental health of military personnel, including stress and depression, and examines oral health and dental check-ups, gambling behaviors, and special gender-specific health issues.”<sup>121</sup>

In the section of the report on military gambling, it was noted that 8.1% of the total DOD group “had experienced at least one of the eight gambling related problems in their lifetime, indicating problem gambling, and 2.2% experienced at least three of these gambling related problems, the level constituting probable pathological gambling.”<sup>122</sup> Researchers also presented findings on the relationship between gambling and drinking. According to the researchers, “data on drinking levels indicate an increased likelihood of a person in the military being a problem or pathological gambler with higher drinking levels, although the vast majority (84.8%) of heavy drinkers had never experienced any gambling-related problems.”<sup>123</sup> The researchers explained that if personnel were not screened for gambling problems when they were admitted into alcohol treatment, their problems might go unnoticed.<sup>124</sup> They also concluded that there might be a “higher prevalence of gambling-related problems” in those personnel who had undetected or untreated alcohol problems.<sup>125</sup>

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118. DOD 1998 HEALTH AMONG MILITARY, *supra* note 28.

119. *Id.* at iii (Preface and Acknowledgements).

120. *Id.*

121. *Id.*

122. *Id.* at § 9.20.

123. *Id.* at § 9.23.

124. DOD 1998 HEALTH AMONG MILITARY, *supra* note 28, at § 9.24.

125. *Id.* at § 9.23-24.



B. GAMBLERS IN THE MILITARY: REDUCING THE HIGH RATES OF PATHOLOGICAL AND PROBLEM GAMBLING

In 1997, a group of Harvard associates analyzed the topic of "Gamblers in the Military"<sup>126</sup> by reviewing the *DOD Military Personnel 1992 Report*<sup>127</sup> conducted by the Research Triangle Institute and directed by the Department of Defense.<sup>128</sup> The survey examined substance abuse and health-related behaviors and was the first DOD survey to include questions about problem gambling.<sup>129</sup> According to the authors at the Harvard Medical School Division on Addictions who reviewed the survey, the researchers "hypothesized that problems related to excessive gambling could affect the financial and psychological well-being of military personnel, which could have a negative effect on military readiness."<sup>130</sup> The survey showed that 7.1 percent of the respondents had a gambling-related problem, and 2 percent met the criteria for probable pathological gambling.<sup>131</sup> The 1992 survey was also used to examine the relationships between problem gambling and alcohol use. Problems with gambling were found to be more common in heavy drinkers as distinguished from abstainers and light drinkers, but "nearly 90% of heavy drinkers had never experienced any problems with gambling."<sup>132</sup>

C. DATA COLLECTION ON GAMBLING PROBLEMS IN THE MILITARY: SCREENING VETERANS FOR PATHOLOGICAL GAMBLING

In 1998, the Harvard Medical School Division on Addictions reported on research involving the screening of veterans for pathological gambling.<sup>133</sup> The Division on Addictions indicated that "individuals with substance abuse or other psychiatric disorders have been shown to have higher rates of pathological gambling disorders than individuals without psychiatric disorders."<sup>134</sup> At the time of reporting, the researchers had "routinely screened a sample of 250 veterans with substance abuse and/or

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126. *Gamblers in the Military*, THE WAGER, Sept. 2, 1997 at 1 [hereinafter *Gamblers in the Military*].

127. *MILITARY PERSONNEL 1992 REPORT*, *supra* note 27.

128. *Id.* at iii.

129. *Gamblers in the Military*, *supra* note 126.

130. *Id.*

131. *Id.*

132. *Id.*

133. *Screening Veterans for Pathological Gambling*, THE WAGER, Apr. 7, 1998, at 1.

134. *Id.*

other psychiatric disorders" in the previous three years for lifetime pathological gambling disorders.<sup>135</sup> Using the South Oaks Gambling Screen (SOGS), 16 percent of the veterans screened positive for pathological gambling while 9 percent screened positive for "probable pathological gambling."<sup>136</sup> In a medical record review of veterans found positive for pathological gambling, researchers reported that "only 1 had been diagnosed with a pathological gambling disorder."<sup>137</sup> Also, compared to a non-problem group, the researchers revealed that "pathological gamblers were admitted significantly more often for psychiatric problems and for drug or alcohol detoxification,"<sup>138</sup> and it was reported that these research estimates fell within the range given by a Harvard meta-analysis of prevalence studies.<sup>139</sup>

#### IV. HISTORICAL BACKGROUND

##### A. PATHOLOGICAL AND PROBLEM GAMBLING IN THE MILITARY

From 1992 data provided by the U.S. Department of Commerce (DOC) as part of a worldwide health survey of military personnel,<sup>140</sup> it was reported in 1998 that "Since 1991 Legalized Gambling has Destabilized the 'Readiness' of U.S. Military Personnel by a 66% Increase in Addicted Gambling."<sup>141</sup> This DOC data revealed that of the 1.5 million military personnel in the Armed Services in 1991, 2 percent were pathological gamblers, while approximately 5 percent were problem gamblers.<sup>142</sup> According to the DOC data, if both the "pathological" and "problem" gambler categories increased proportionally from 1994-1997, a 66 percent increase would occur by 1997, which would represent approximately 50,250 and 162,000 military personnel in the pathological and problem

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135. *Id.*

136. *Id.*

137. *Id.*

138. *Id.*

139. Harvard Addictions Meta-analysis, *supra* note 84, App. II; Harvard Division on Addictions Press Release, *supra* note 84 (stating that from .84 percent in 1993 "the prevalence rate for 1994-1997 grew to 1.29 percent of the adult population.").

140. MILITARY PERSONNEL 1992 REPORT, *supra* note 27, at 12-14 to 12-30.

141. U.S. and International Costs, *supra* note 86, tbl. 11. Although sitting on the panel when this data was presented, William Eadington made no comment or challenge on the data.

142. MILITARY PERSONNEL 1992 REPORT, *supra* note 27, at 12-14 to 12-30.

gambling categories, respectively.<sup>143</sup> These conclusions and concerns were not effectively dispelled by the cursory *DOD 2001 Slots Report*.<sup>144</sup>

B. U.S. SENATOR ESTES KEFAUVER AND THE 1950S HEARINGS ON ILLEGAL GAMBLING<sup>145</sup>

In the 1940s and 1950s, the Gold Coast of Mississippi harbored many sites of illegal gambling which were purported to make the Coast more attractive to tourists.<sup>146</sup> In the 1990s the gambling joints were replaced by legalized casino hotels credited with igniting the "Mississippi miracle," an economic boom.<sup>147</sup> Investigations into the Mississippi clubs' gambling activities began in 1950 with hearings conducted by U.S. Senator Estes Kefauver and continued into 1951 when he transferred control of the probe over to U.S. Senator Lyndon Johnson. These investigations caused a temporary halt in some of the then illegal gambling activity.<sup>148</sup> Senator Kefauver contended that "open gambling and liquor posed a threat to the military preparedness of airmen"<sup>149</sup> and the illegal "gambling, Kefauver said, was eating up [twelve to twenty percent] ... of Keesler's \$4 million monthly payroll."<sup>150</sup> Also, two lieutenants at the base committed suicide over gambling debts.<sup>151</sup> In 1998 military readiness was obviously still a concern as there were "reports of suicides and enlisted men pawning their uniforms to pay gambling debts."<sup>152</sup> However, Major General James Powell, commander of Keesler AFB, believed that the situation was "a civilian problem, not a military one."<sup>153</sup> He concluded that the problem

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143. *See id.*

144. Casey, *supra* note 37, at H1, H4.

145. *Investigation of Organized Crime in Interstate Commerce: Hearings on S. Res. 129 Before the Special Comm. to Investigate Organized Crime in Interstate Commerce*, 82nd Cong., 1st Sess. (1950-1951) [hereinafter *Kefauver Hearings*]; THE KEFAUVER COMM. REPORT ON ORGANIZED CRIME, 174-193 (Didier Books 1951) [hereinafter *KEFAUVER REPORT ON ORGANIZED CRIME*].

146. Dave Palermo, *The Day Gambling Died 1951 Hearing Snuffed Coast's Business—For Awhile*, SUN HERALD (Biloxi, Miss.), Aug. 23, 1998, at A1 [hereinafter *Gambling 1951 Hearing*].

147. *Id.*

148. *Id.* *See also* Kefauver Hearings, *supra* note 145; KEFAUVER REPORT ON ORGANIZED CRIME, *supra* note 145.

149. *Gambling 1951 Hearing*, *supra* note 146, at A1.

150. *Id.*

151. *Id.*

152. *Id.*

153. *Id.*

"must be met by the citizens of the community and their elected leaders."<sup>154</sup> Even so, by 1999 this gambling region had experienced thirteen gambling-related suicides during a 2-year period among military personnel and their families, and the military instituted gambling-education courses.<sup>155</sup>

## V. TRENDS AND CONDITIONING FACTORS

### A. CASE STUDIES: CASINOS ON THE MISSISSIPPI COAST

Serious attempts to rid the Mississippi Gulf Coast of illegal gambling began in 1951 when U.S. Senator Estes Kefauver and the Preparedness Subcommittee of the U.S. Senate Committee on Armed Services held a hearing in Biloxi, Mississippi.<sup>156</sup> However, by 1989 an oxymoron of legislative action was proposed toward legalizing formal gambling. Via quick action and carefully crafted scenarios, casino lobbyists were able to clear hurdle after hurdle, dodging "Christian" legislators and avoiding social-impact studies.<sup>157</sup> One Mississippi legislator complained that "[I]t all happened so fast, we hardly had time to vote on the bill, much less read it."<sup>158</sup> Legislators did not take the time to consider the possible costs of legalizing gambling, such as increased crime rates, pathological and problem gambling, higher taxes to address highway and sanitation system demands, and harmful effects upon existing businesses.<sup>159</sup> Although the casinos improved overall economic conditions in localized areas like Tunica County, the gap between blacks and whites widened as "casino carpetbaggers"<sup>160</sup> continued to argue they were creating jobs and revenue. The gambling industry was criticized for utilizing "racial, ethnic, and religious targeting."<sup>161</sup> Ben Toledano concluded that decriminalized

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154. *Id.*

155. *Military Personnel Panel Discussion and Report*, (KAJM-296 radio broadcast, Honolulu, Hawaii, Mar. 25, 1999).

156. Ben C. Toledano, *Gambling 'Carpetbaggers' Make Mississippi a Lesson to Other States*, WORLD HERALD (Omaha, Neb.), Apr. 13, 1997, at B13 (abbreviated reprint from Apr. 7 article in NAT'L REV.) [hereinafter Toledano]. See also, *Kefauver Hearings*, *supra* note 145; KEFAUVER REPORT ON ORGANIZED CRIME, *supra* note 145.

157. Toledano, *supra* note 156, at B13.

158. *Id.*

159. *Id.*

160. *Id.*

161. *Id.*

organized gambling led "to political control over individuals, communities, and local and state governments."<sup>162</sup>

#### B. UNCLE SAM'S MILITARY CASINOS

As the Twenty-First Century began, a "depressed" Gloria Calhoun, a USAF technical sergeant stationed in South Korea, wrote approximately \$14,000 in bad checks to pay for the debts she accumulated from slot machine playing around her base.<sup>163</sup> The Department of Defense received from people like Sergeant Calhoun "a tidy sum [\$125 million in 2000] from more than 7,000 slot and video poker machines on 94 U.S. military installations overseas."<sup>164</sup> Pentagon officials argued that gambling revenues constituted "an essential and harmless source of funding,"<sup>165</sup> yet Sergeant Calhoun was demoted and given a sixty-day jail sentence due to this "harmless" way to pay for U.S. morale boosters.<sup>166</sup> As an example, the question remained: "What was and is Sergeant Calhoun's military readiness level?" Experts on gambling addiction have demonstrated that gambling can foster a dependency that may lead to criminal behaviors like Sergeant Calhoun's.<sup>167</sup> In 2002, the national media reported on two of the DOD's studies which concluded that approximately two percent of U.S. military personnel (or 30,000 people) had the "indicators of probable pathological gambling," a startling figure suggesting that these people could act similarly to Sergeant Calhoun.<sup>168</sup> In the national press, the Pentagon's Morale, Welfare, and Recreation Department was castigated for ignoring these problems when the Department announced that "[s]lot machines have no negative impact on troops overseas."<sup>169</sup>

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162. *Id.*

163. Mark Mazzetti, *Military Casinos: Uncle Sam's One-Armed Bandits*, U.S. NEWS & WORLD REP., May 20, 2002, at 36.

164. *Id.*

165. *Id.*

166. *Id.*

167. *Id.*

168. *Id.*

169. *Id.*

## VI. POLICY ALTERNATIVES AND RECOMMENDATIONS

### A. BAN ALL GAMBLING IN THE U.S. MILITARY

#### 1. *Prohibition of Command-Sanctioned Military Gambling*

In 2001, President George W. Bush began taking a Harvard MBA look at the military, which included establishing clear strategic objectives, motivating military personnel via higher pay to achieve those objectives, and determining the cost effectiveness of weapons systems in meeting proscribed objectives.<sup>170</sup> According to the *Christian Science Monitor*, "[t]he welfare of our troops would be improved if the Pentagon also took a good hard look at the vice of gambling that it permits and perpetuates on military bases."<sup>171</sup> During the early 1990s, the U.S. Army's Community and Family Support Center considered running an official lottery on overseas U.S. military bases and paid \$49,000 for a worldwide sample of military opinion.<sup>172</sup> Apparently, the Pentagon abandoned the project pursuant to the evidence of increased addicted gambling; however, thousands of video poker and slot machines continued to be operated on overseas military bases.<sup>173</sup> The impacts of these machines on military personnel can be devastating, especially to those with a gambling addiction. This was the case for Senior Airman Lenyatta Tinelle, who in one year lost \$28,000 while serving at the Keflavik, Iceland base.<sup>174</sup> U.S. Representative Roscoe Bartlett concluded that these slot machines should be eliminated and has expressed his concern saying "We have no right to put this type of temptation in front of our young people."<sup>175</sup> Accordingly, the President has been urged to eliminate these machines on U.S. military bases, which would be consistent with the espoused good management approach toward military issues.<sup>176</sup>

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170. John Hughes, *Cut Military Gambling*, CHRISTIAN SCI. MONITOR (Boston), Feb. 21, 2001, at 1, available at <http://www.csmonitor.com/durable/2001/02/21/fp9s2-csm.shtml>.

171. *Id.*

172. *Id.*

173. *Id.*

174. *Id.*

175. *Id.*

176. *Id.*

## 2. *The Cost/Benefit of Military Gambling Machines*

### a. *Decreased "Military Readiness" for Benefits of Only \$127 Million in Military Welfare Funds?*

It was arguable that the military's overseas slot machines were a gamble in themselves.<sup>177</sup> The proponents of the slot machines argued that the \$127 million in income from the slots was needed to support programs in the military.<sup>178</sup> Those against military slot machines focused on the harmful effects on addicted military personnel and their families.<sup>179</sup> By 1999, there were ninety-four bases and other posts that possessed slot machines, and the \$127 million lost by military personnel was used to fund "morale, welfare, and recreation" activities.<sup>180</sup> According to Arnie Wexler, a consultant on pathological and problem gambling, "[t]hey're [the military] taking money from their own people and dependents of those people."<sup>181</sup> Accordingly, experts recommended that the military should prohibit electronic gambling devices, video poker machines, and other modern forms of slots which sociologists commonly referenced "as the crack cocaine of gambling, creating new, addicted gamblers."<sup>182</sup>

### b. *The Strategic Costs of Pathological Gambling*

#### 1. *The 1999 Australia Productivity Commission*<sup>183</sup>

In Australia more was gambled away in 1999 than was saved by the public, and the pathological gambling rate was 2.3 percent.<sup>184</sup>

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177. *Slot Machines Military's Gamble*, *supra* note 29, at 1.

178. *Id.*

179. *Id.*

180. *Id.*

181. *Id.*

182. *Id.* See, e.g., *Video Crack*, *supra* note 29, at 58.

183. PRODUCTIVITY COMM'N, AUSTRALIA'S GAMBLING INDUSTRIES (1999) [hereinafter AUSTRALIA PROD. COMM'N]. See AUSTRALIAN INST. GAMBLING RESEARCH, SURVEY OF THE NATURE AND EXTENT OF GAMBLING AND PROBLEM GAMBLING IN THE ACT (2001) (giving an update of costs per problem gambler).

184. Hon. Nick Xenophon, Member, Legislative Council, South Australia, Speech at the Annual Conference of the National Coalition Against Legalized Gambling and the National Coalition Against Gambling Expansion (Sept. 24-26, 1999) [hereinafter Xenophon

Significantly, 1.5 percent of the gross domestic product involved wagers in legalized gambling activities.<sup>185</sup> There were 18 million people in Australia, and in 1992, they lost \$5 billion in legalized gambling activities.<sup>186</sup> By 1998, this amount had more than doubled to \$11 billion<sup>187</sup> and half of that amount was lost in electronic gambling devices (including video gambling machines).<sup>188</sup>

## 2. *The Socio-Economic Costs of Each New Pathological (Addicted) Gambler*

Prior to the mid-1990s, the medical and social costs associated with treating and remedying the negatives committed by the individual pathological gambler ranged between \$13,200 and \$52,000 (unadjusted to present value).<sup>189</sup> The higher numbers were published and/or verified in a reviewed article published in the *Journal of Gambling Behavior*.<sup>190</sup> The higher end of the spectrum was given the actual or implied imprimatur of the *Journal*—even though the *Journal* was influenced, to a greater or lesser degree, by the interests of the gambling industry. In particular, William Eadington became one of the two main editors of the *Journal* when its predecessor, the *Journal of Gambling Behavior*, ran into financial difficulty and needed the support of the gambling industry.

Professor Henry Lesieur, the originator and first editor of the *Journal of Gambling Behavior* (renamed the *Journal of Gambling Studies* in 1990 with William Eadington as co-editor) repeatedly reported statistics on pathological gambling and its associated costs.<sup>191</sup> These costs closely paralleled those statistics and tables in the 2001 *Mega-Lawsuits* article.

Since the cost estimates ranging up to \$52,000 per pathological gambler were published and the methodology of determining them verified by the *Journal*, the gambling industry has been trying to lower these cost

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Speech].

185. AUSTRALIA PROD. COMM'N, *supra* note 183, at 2.

186. Xenophon Speech, *supra* note 184.

187. AUSTRALIA PROD. COMM'N, *supra* note 183, at 2.

188. Xenophon Speech, *supra* note 184.

189. For a summary of the socio-economic costs as of 1994, see *Congressional Gambling Hearing 1994*, *supra* note 117, at 77, 79-80, nn.9-12.

190. Robert M. Politzer, James S. Morrow, Sandra B. Leavey, *Report on the Cost-Benefit/Effectiveness of Treatment at the Johns Hopkins Center for Pathological Gambling*, 1 J. GAMBLING BEHAV. 131, 131-42 (1985).

191. See, e.g., Henry R. Lesieur, *Experience of Employee Assistance Programs with Pathological Gamblers*, 19 J. DRUG ISSUES 425 (1989).



estimates via promoting new studies.<sup>192</sup> Critics of the gambling industry found it ironic that apologists for the gambling industry, including Mr. Eadington, had not questioned any of these higher cost estimates throughout the 1980s and early 1990s—even though they claimed years of experience in analyzing these issues.<sup>193</sup> Since the mid-1990s, the gambling industry has endeavored to promulgate new cost estimates—which as might be expected, have been lower than the earlier estimates.<sup>194</sup>

c. *Decriminalized Gambling: The "Acceptability Factor" and the "Accessibility Factor"*

For decades pro-gambling interests would not recognize that gambling created pathological and problem gamblers until an industry-financed study revealed that "Legality Spreads The Compulsion to Gamble,"<sup>195</sup> as reported by the *New York Times*. "Casino industry executives, who market their products as harmless adult entertainment, until [December 1997] had been loathe to concede that some gamblers become addicted."<sup>196</sup> That more people will become hooked on gambling as it is "legalized"<sup>197</sup> and "spreads"<sup>198</sup> to new jurisdictions (known as the "acceptability" and "accessibility" principles) was summarized by Howard Shaffer when he reported on his 1997 study of pathological and problem gamblers: "The people who are most sensitive to social sanctions or social pressures *only* began to gamble when it became *legal in more places*."<sup>199</sup>

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192. See generally, *Research Financed by Industry*, *supra* note 85, at A17. See also *Casino Backlash*, *supra* note 74, at A1.

193. See, e.g., *Congressional Hearing on Gambling Impact Commission*, *supra* note 21, at 160.

194. See *Casino Backlash*, *supra* note 74, at A1; *Mega-Lawsuits*, *supra* note 61, at 31-32. See generally *Research Financed by Industry*, *supra* note 85, at A17.

195. Brett Pulley, *Study Finds Legality Spreads The Compulsion to Gamble*, N.Y. TIMES, Dec 7, 1997, § 1, at 42 [hereinafter *Gambling Spreads Due to Legality*]. See generally Harvard Addictions Meta-analysis, *supra* note 84; Harvard Division on Addictions Press Release, *supra* note 84.

196. *Gambling Spreads Due to Legality*, *supra* note 195, at 42.

197. *Id.*

198. Derrick DePledge, *Gambling Boom Breeds Troubled Players*, DES MOINES REG., Dec. 5, 1997, at A6.

199. *Id.* (emphasis added).

B. RECOGNIZE ERRONEOUS INFORMATION IN THE AGE OF TERRORISM:  
CREDIBILITY ISSUES AND PRO-GAMBLING INFLUENCES

1. *Recommendation: Follow the Money*

In the Twenty-First Century Age of Terrorism, as in all important issue areas, accurate information is essential. The importance of communicating relevant, authoritative, and current information that "could have foiled some of the 9/11 hijackers"<sup>200</sup> was highlighted by the 2001 attacks on the World Trade Center.<sup>201</sup> In this context, some industries might have an inherent interest in repressing or controlling information that could damage or even eliminate their financial base. Accordingly, credibility issues become important and in a legal context, the impeachment of industry informational sources becomes relevant. In 1994, the *Columbia Journalism Review* indicated what the threshold test is: Follow the Money.<sup>202</sup>

2. *Recommendation: Encourage the Academic Community to Divorce Itself from the Direct and Indirect Financial Aura of Pro-Gambling Interests*

During the 1990s, national U.S. press sources raised issues involving the appearance of direct and/or indirect conflicts of interest in the interface between academics/experts and pro-gambling interests.<sup>203</sup> The only practical method for avoiding such criticisms was for impacted members of the academic community to divorce themselves completely from a financial interface with pro-gambling interests. Accordingly, some academics/experts, such as several at the University of Illinois, refused to receive any honoraria, consultant fees, or even grants from any pro-gambling interests or other special interests.

In the article *The Costs of Addicted Gamblers: Should the States Initiate Mega-Lawsuits Similar to the Tobacco Cases?*<sup>204</sup> (*Mega-Lawsuits*) it was appropriate to recap some of the issues already raised by the national

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200. Romesh Ratnesar & Michael Weisskopf, *How the FBI Blew the Case*, TIME, June 3, 2002, at Front Cover.

201. *Id.* at 24-32.

202. COLUM. JOURNALISM REV., *supra* note 1, at 36-38.

203. *See, e.g.*, sources cited *infra* notes 201-11.

204. *Mega-Lawsuits*, *supra* note 61.

media involving the financial aura projected by pro-gambling interests and the potential impeachment of witnesses. Contrary to implications by gambling industry apologists that only one national news outlet had raised these issues, these types of issues have been raised for example by:

- a. *The Chronicle of Higher Education*,<sup>205</sup>
- b. *The Philadelphia Inquirer*,<sup>206</sup>
- c. A series of *Los Angeles Times* articles,<sup>207</sup>
- d. *The St. Louis Post-Dispatch*,<sup>208</sup>
- e. *The New York Times*,<sup>209</sup>
- f. A series of articles in *Mother Jones Investigative Magazine*,<sup>210</sup>  
and
- g. *The Columbia Journalism Review*,<sup>211</sup> et alia.

When numerous national media stories have raised similar credibility issues, the academic community must necessarily address them as well. The primary goal should be for the academic community to eliminate all direct and indirect financial links to pro-gambling interests or other special interests. Some academics/experts who attempted to maintain a degree of contact with the pro-gambling interests during the 1990s via the grant/research process eventually felt that they had to distance themselves from those gambling interests presumably to maintain their own ethical standards.<sup>212</sup>

### 3. Recommendation: Encourage More Public Scrutiny

The millions of dollars which pro-gambling interests have utilized to promote or impact research may return to haunt the industry and associated

205. See, e.g., *Research Financed by Industry*, *supra* note 85, at A17-18.

206. See, e.g., *Gambling Seeks Image*, *supra* note 83, at A1.

207. Several articles in the LOS ANGELES TIMES ran each day beginning the week of December 13, 1998. See, e.g., *Casino Backlash*, *supra* note 74, at A1; *Treatment Options*, *supra* note 63, at A1. See also David Ferrell, *Indians Have Found a Bonanza in the Casino Business*, L.A. TIMES, Dec. 14, 1998, at A26; David Ferrell, *Living by Casinos, Losing by Casinos*, L.A. TIMES, Dec. 14, 1998, at A26; Matea Gold, *New Gamblers Find Old Troubles*, L.A. TIMES, Dec. 13, 1998, at A27; Matea Gold & David Ferrell, *Going for Broke*, L.A. TIMES, Dec. 13, 1998, at A1.

208. See, e.g., Young, *supra* note 85, at A9.

209. See, e.g., Brett Pulley, *Regulators Find Easy Path to Gambling Industry Jobs*, N.Y. TIMES, Oct. 28, 1998, at A1.

210. See, e.g., April Lynch, *All Bets Are Off*, MOTHER JONES, July/Aug. 1997, at 38-39 [hereinafter *Bets*]; April Lynch, *Heavy Betting*, MOTHER JONES, July/Aug. 1997, at 40.

211. See, e.g., COLUM. JOURNALISM REV., *supra* note 1, at 36-38.

212. See generally *Casino Backlash*, *supra* note 74, at A1.

research interests. The national media and academia have indicated that the following groups may face particular scrutiny:

- a. The National Center for Responsible Gaming (NCRG) founded in 1996 by the American Gaming Association,<sup>213</sup>
- b. The *Journal of Gambling Studies* after pro-gambling interests began significant funding circa 1990 (formerly the *Journal of Gambling Behavior*),<sup>214</sup>
- c. The *Gaming Law Review* founded in 1997 but which has no university affiliation,<sup>215</sup>
- d. The National Council on Problem Gambling (NCPG),<sup>216</sup> and
- e. The UNLV Boyd Law School,<sup>217</sup> founded in 1996-97.

213. See, e.g., *Casino Backlash*, *supra* note 74, at A1. See *supra* notes 205-11 and accompanying text. In establishing the National Center for Responsible Gaming, Frank Fahrenkopf, the CEO of the American Gaming Association lobbying group admitted that "industry-financed studies . . . have not found credibility with the public." Rick Alm, *KC Will Be Home to Foundation for Gambling Studies*, KAN. CITY STAR, Oct. 17, 1995, at B1. "We do not want to make the mistakes the tobacco industry made, saying, 'Smoking is good for you,'" Fahrenkopf said. Associated Press, *Industry to Study Problem Gambler*, DES MOINES REG., Feb. 19, 1996, at A1. According to Tom Irwin, the director of the Missouri Gaming Commission, "You have to decide how much of this is altruism and how much is self-preservation, . . . At least what I've heard so far, they seem to be trying to honestly deal with the problem." *Id.* However, Irwin concluded: "We look at all of this with a fairly jaundiced eye." *Id.* See generally, *Center of Controversy*, *supra* note 90, at 4.

214. See *supra* notes 205-11, 213 and accompanying text; *Treatment Options*, *supra* note 63, at A1. See also Transcripts of symposium "Betting on the Future: Taking Gaming and the Law into the 21st Century," Benjamin N. Cardozo Law School, Yeshiva Univ., New York, New York, Nov. 15-16, 1999 [hereinafter Cardozo Law School Symposium].

215. See *supra* notes 205-11 and accompanying text.

216. See, e.g., *Treatment Options*, *supra* note 63, at A1. See *supra* notes 205-11 and accompanying text. Like a censorship of Mothers Against Drunk Driving (MADD), one example of the NCPG seriously challenging normal academic discourse occurred during the NCPG's 10th Annual Conference from September 3-5, 1996. The sponsors of the NCPG assigned the display booth of the Illinois Church Action on Alcohol Problems (ILLCAAP) behind a conference hall door which was then allegedly locked to discourage visitors and on which was placed a disclaimer by the NCPG leadership stating its disagreement with ILLCAAP's brochures. For a discussion of the objections these apparent actions caused, see Letter from Anita Bedell, Executive Director, ILLCAAP, Springfield, Ill., to Leadership/10th Annual Conference Sponsors, NCPG, Sept. 12, 1996 (public letter, on file with Anita Bedell); Letter to Anita Bedell, Executive Director, ILLCAAP, Springfield, Ill., from Representative of 10th Annual Conference Sponsors/ NCPG, Sept. 16, 1996 (public letter on file with Anita Bedell) (the disclaimer involved "a heated discussion among board members from the National Council on Problem Gambling").

217. *Gambling Seeks Image*, *supra* note 83; John L. Smith, *Professor Sees Gamers and Hookers and Lawyers*, *Oh My*, LAS VEGAS REV.-J., Nov. 2, 1997, at 18 [hereinafter *Professor Sees Gamers*]; *Illinois Prof. Takes Swing at UNLV's Law-School Bid*, SAN DIEGO UNION-TRIB., May 9, 1999 [hereinafter *Swing at UNLV's Law-School Bid*]. See also Cardozo Law School Symposium, *supra* note 214.

The 2001 President of the NCRG,<sup>218</sup> whose associated company pledged \$875,000 to the NCRG, also provided the primary contribution of \$5 million to establish the UNLV Boyd Law School.<sup>219</sup>

Critics argued that the financial aura of pro-gambling interests could have the effect of tainting the research process. In reviewing the NCRG, the news media made some comparisons to the tobacco industry:

Some critics see an analogy with cigarette manufacturers, which for decades financed medical studies on tobacco—and were later found to have suppressed evidence that cigarettes were harmful.

"It's the Tobacco Institute of gambling," grumbled Bernie Horn [the former] legislative director for the National Coalition Against Legalized Gambling in Washington. "The Tobacco Institute used to fund all these studies about how smoking is good for you," Horn said, contending that the gambling industry is essentially doing the same thing.<sup>220</sup>

While there may not always be full disclosure of the degree of involvement or influence exercised by the AGA lobbying group and its associates in various organizations, many academics, experts, and government decisionmakers will need to explore these issues and then decide whether to embrace or divorce themselves from suspect groups. When AGA representatives and lobbyists blatantly seek visibility in some groups, *a fortiori* the nonvisible influences of the AGA's philosophies become more problematic to decisionmakers. Upon being made aware of the apparent direct and indirect conflicts of interest outlined in the *Mega-Lawsuits* article, academics/experts should divorce themselves from the gambling industry's umbra and rejoin mainstream academia.<sup>221</sup>

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218. NAT'L CTR. FOR RESPONSIBLE GAMING, ANNUAL REPORT 2001, at 3-4 [hereinafter NCRG 2001 ANNUAL REPORT].

219. *Id.* at 4. Of the \$7 million endowment for the UNLV Boyd Law School, "\$5 million came from Boyd, a Las Vegas lawyer who owns 10 casinos across the country, including two in Las Vegas." *Gambling Seeks Image*, *supra* note 83 at A1.

220. *Gambling Seeks Image*, *supra* note 83, at A1.

221. *Mega-Lawsuits*, *supra* note 61, at 17.

4. *Recommendation: Focus on the Relevant Issues: Are Pro-Gambling Interests Obfuscating the Obvious?*

The personalized defense of pro-gambling interests speaks for itself—*res ipsa loquitur*. However, researchers should note the paucity of footnotes (e.g., a couple dozen) in most studies by pro-gambling interests—which also frequently cite to other industry-financed studies and materials. By comparison, the *Mega-Lawsuits* article sometimes criticized by pro-gambling consultants has 372 footnotes plus 15 tables.<sup>222</sup>

As indicated in such academic publications as the *Harvard Law Review*,<sup>223</sup> the types of criticisms promulgated by the gambling industry parallel the types of tactics and responses utilized by some defenders of the tobacco industry.<sup>224</sup> A 1999 article in the *Harvard Law Review* complained that “[t]obacco manufacturers tried to portray scientists who reached conclusions about the adverse effects of smoking as zealots who would do anything, including conducting flawed science, to put the industry out of business.”<sup>225</sup> Unfortunately, it is in this context that analyses must be made. Still, it is essential to examine those gambling issues impacting U.S. military personnel and concomitant military readiness and not allow representatives of the U.S. gambling industry to obfuscate the obvious.

5. *Recommendation: Follow Frank Fahrenkopf, the Washington Lobbyist for the American Gaming Association: All in the Family?*

In 1995, Frank Fahrenkopf helped found and then became the CEO of the Washington-based lobbying group, the American Gaming Association (AGA), which had a budget of over \$4 million per year.<sup>226</sup> He also became a Board Member of the National Center for Responsible Gaming (NCRG) formed by the AGA in 1996<sup>227</sup> with a multi-million-dollar budget provided almost exclusively by the gambling industry.<sup>228</sup> He also served on the editorial board of the “self-styled *Gaming Law Review*—whose name is misleading since it has no university sponsor.”<sup>229</sup> “Founded in 1997 and

222. *Id.*

223. John D. Hason & Douglas A. Kysar, *Taking Behavioralism Seriously: Some Evidence Of Market Manipulation*, 112 HARV. L. REV. 1420 (1999).

224. *See generally id.*

225. *Id.* at 1494. *See also Wars on First Amendment*, *supra* note 23.

226. *Casino Backlash*, *supra* note 74, at A1.

227. *Id.* at A24.

228. *See, e.g.*, NCRG 2001 ANNUAL REPORT, *supra* note 218, at 4-5.

229. *See supra* notes 205-11 and accompanying text; *Mega-Lawsuits*, *supra* note 61,

publishing many pro-industry articles, the *Gaming Review* is vulnerable to being labeled as primarily a gambling industry publication."<sup>230</sup> "With a few exceptions, the editorial board for the *Gaming Review* consists of gambling industry consultants, columnists for industry magazines, and lobbyists."<sup>231</sup>

In the first volume of the *Gaming Review*, editorial board member Keith S. Whyte first utilized the "American Gaming Association" as his organizational identifier, but thereafter he became head of the National Council on Problem Gambling and was subsequently identified with the NCPG.<sup>232</sup> William Eadington has been listed on the editorial board of the *Gaming Review* since its first issues even though he appears to have no "legal" background or degrees.<sup>233</sup> By 1999 the two main editors of the *Gaming Review* were both associated with or made money from the gambling industry.<sup>234</sup>

The 2001 Annual Report of the NCRG indicated that almost all of the NCRG's multi-million dollar budget was provided by gambling companies and pro-gambling interests.<sup>235</sup> The two chief editors of the *Journal of Gambling Studies*, William Eadington and Howard Shaffer, were also associated with the NCRG. The NCRG's Annual Report indicated that the NCRG contracted to establish the Institute for Research on Pathological Gambling and Related Disorders<sup>236</sup> which the press reported as a de facto move of the NCRG from Kansas City to the Harvard Division on Addictions with Howard Shaffer.<sup>237</sup> Mr. Eadington was listed as a member of the Institute's Program Advisory Board "whose role is to counsel the Institute on all aspects of its program,"<sup>238</sup> and Shaffer was listed as "Staff,"<sup>239</sup> as well as on the "NCRG Board of Directors."<sup>240</sup>

To avoid these types of observations, which could become issues in future scenarios, all academics/experts should be alert to these

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at 32.

230. *Mega-Lawsuits*, *supra* note 61, at 32.

231. *Id.* See generally, Editorial Boards, vols. 1-6 GAMING L. REV. (1997-2002).

232. Compare Editorial Boards, vols. 1-2 GAMING L. REV. (1997-1998), with vols. 3-5 GAMING L. REV. (1999-2001).

233. *Id.*

234. *Id.*

235. NCRG 2001 ANNUAL REPORT, *supra* note 218, at 4-5.

236. *Id.* at 2, 6-7.

237. Damon Hodge, *Problem Gambling: Relocation of Gaming Center Praised*, LAS VEGAS REV.J., Nov. 4, 2000, at 3D.

238. NCRG 2001 ANNUAL REPORT, *supra* note 218, at 7.

239. *Id.*

240. *Id.* at 3.

considerations and should completely divest themselves of these and similar associations.<sup>241</sup>

## VII. CONCLUSION

### A. REINSTITUTE THE BAN ON ELECTRONIC/VIDEO GAMBLING DEVICES ON U.S. BASES AND FACILITIES

The U.S. Armed Forces should reinstitute the historical ban on electronic/video gambling devices and slot machines due to the costs of training military personnel, related suicides, and the costs of reducing "military readiness"—as thousands of new personnel become addicted or problem gamblers. In the Twenty-First Century's Age of Terrorism, the \$127 million in recreational funds generated by the machines were miniscule compared to the larger policy issues involving "military readiness." Furthermore, the Department of Defense should be wary of competing budget interests; namely, U.S. gambling lobbyists who could finesse a \$40 billion tax write-off for electronic gambling devices justified as an economic stimulus to counter the economic consequences of the 9/11 terrorist attack on the World Trade Center.

### B. ACADEMICS/EXPERTS SHOULD COMPLETELY DIVORCE THEMSELVES FROM THE DIRECT AND/OR INDIRECT FINANCIAL AURA OF PRO-GAMBLING INTERESTS

When multiple sources in the national media begin raising similar questions of potential financial conflicts of interest in several research areas, then members of the academic community should take note and divorce themselves from those apparent financial conflicts. Accordingly, some academics, including several at the University of Illinois, decline to accept any honoraria, consultant fees, or research grants from pro-gambling interests or other special interests. By adopting a similar policy, the concerns voiced in the national media, including the *Chronicle of Higher Education*,<sup>242</sup> could be quieted.

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241. See generally, *Research Financed by Industry*, *supra* note 85, at A17.

242. *Id.*